

Legal and Institutional Framework for the Protection of Foreigners in Cameroon

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Abstract

Even though the CEMAC has provided available dispositions and encouraged the free movement of persons and establishments through its sub-region, there have not been general acceptable instruments by the contracting states to effectively control and manage free movement of persons into their territories. This lacuna has made it possible for individual member states to establish individual laws and other dispositions to monitor and control foreigners who intend taking up residence in their territories. These laws range from the Constitution to other relevant texts and documents. A detailed study of Cameroon legal and institutional frameworks will ascertain the degree of protection offered to foreigners in their territories. In addition, analyzing the legal and institutional frameworks of protection is to ensure that the above state respects and establishes standards in conformity to those stipulated by international law. For the purpose of this work, an examination of various legal and institutional dispositions will enable us to justify the treatment given to migrants by this state.

Keywords: Cameroon, Foreigners, Protection, Republic, Standards, Territories

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INTRODUCTION

The Republic of Cameroon is a middle-sized bilingual speaking country on the west coast of Central Africa, covering a total of 475,440 sq km [1]. The country has hosted large foreign communities such as the French, Americans, Germans, Chinese, Nigerians, Equatorial Guineans, and a host of other nationals. In order to achieve this goal, the government of Cameroon has established mechanisms, laws, and institutions in effectively protecting the status and rights of foreigners residing and carrying out activities within the confines of the national territory. It should be understood that the mechanism of protection is used to protect both foreigners and nationals, but the truth is foreigners should not be given superior rights to those provided to nationals, though there are some peculiarities that exist in protecting foreigners.

The main text the 1996 Constitution has specifically incorporated some fundamental rights and freedoms mentioned by the Universal Declaration of Human Rights, the International Covenants on Civil and Political

Rights, the United Nations Charter, the African Charter on Human and Peoples Rights as well as other known ratified conventions [1]. As a result of this legal regime, the country recognizes that:

1. No one shall be persecuted, arrested or detained except in cases of and according to the manner determined by law.
2. The law shall ensure the right of every person to a fair hearing before the court.
3. Every accused is presumed innocent until found guilty during hearings conducted in strict compliance with the law.
4. Every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances, should anyone be subjected to torture or to cruel inhumane or degrading treatment.

In this sphere, it will be necessary for us to have an inside view of the country's legal climate with a view to ascertaining whether foreigners living in Cameroon are accorded legal protection. This analysis is to demonstrate that the country has adhered to its binding international commitments and

instruments in maintaining the standards of protecting foreigners among its citizens.

LEGAL INSTRUMENTS FOR THE PROTECTION OF FOREIGNERS IN CAMEROON

The legal regime or network for the protection of foreigners in Cameroon is of fundamental importance for the general protection given to citizens. At the national level, there is an arsenal of legislation protecting civil, economic, and political rights of nationals and foreigners alike. The country's Constitution of 1996 as amended in 2008 [2] emphasizes state's obligation to respect and protect the human rights of all persons residing in its territory. The provision in the preamble also reaffirms Cameroon's adherence to the Universal Declaration of Human and Peoples Rights, 1948, as well as other human rights conventions to which Cameroon is a party.

NORMATIVE FRAMEWORKS

As all international instruments to which Cameroon has acceded, the Constitution is part of domestic law. Consequently, the Constitution is directly enforceable and relied upon before a court. The rights stipulated in the Constitution are part of human rights by virtue of the indivisibility of which their enjoyment is guaranteed by other international and national instruments.

International Normative Framework

Cameroon has made international commitments at the global, regional and sub-regional levels in offering protection to foreigners living in its territory.

Global Commitments of Cameroon

Cameroon as signatory to many international treaties and engagements has contributed immensely in the promotion and protection of foreigners in its territory. Such was evident when in 1985 the country has to fight for the suppression of traffic on women of full age [3]. This international commitment was to help the international community in its way to suppress the traffic of women of full age considered as a violation on the fundamental right of women. This commitment continues by the country at the level forced and compulsory labor carried out during employment contracts [4]. The government

makes sure it conforms to the objective stipulated by the International Labor Organization when it comes to employment contracts signed between employers and employees, be it between nationals or foreigners. The state makes sure that no form of force or compulsory labor is meted out to a foreign worker working in an establishment in the country. This brings us to one of the characteristics of a labor contract, that it must be a contract of free will by seeing that parties to employment contract decide whether to establish or enter into a contract or not. Parties should not sign or enter into any contract against their will; if not, such a contract will be considered as an illegal contract.

As for the protection of refugees, Cameroon has ratified the lone United Nations document protecting refugees in the world [5]. This commitment made by the Cameroon government is to ensure that refugees entering its territory are offered the minimum protection just as those of other countries. This state respects the fundamental rights of refugees like those of asylum [6], non-refoulement [7], and non-discrimination. The state offers protection to refugees found in its territory. This concept of protecting refugees by the Cameroon state as a signatory to the United Nations Convention on Refugees does not mean that the state will accept refugees to enter into their territory even at the detriment of the security of the state. It is always the responsibility of every state to ensure and protect its sovereignty through the elimination of those practices that can affect the security and peace of the country. Such protection cannot be offered by the state where admitting such a person will contravene the internal security of the country. This is therefore the reason why determining refugee status had been left in the hands of every contracting state of the convention.

At the level of handling torture, the country has carried out enormous effort in fighting this evil by being a party to the International Convention to Fight Torture [8]. The government has contributed in its own way to fight against those embodiments that can cause pain and suffering on people. They considered this as violation of the fundamental right of all. The international community frowns at a state

that allows unacceptable practices that are degrading and inhumane to be meted out to humans. They believe that it is the responsibility of the state to ensure strict application and implementation of prescribed principles established by human rights laws to which the country in question is a signatory. As signatory to a recognized international instrument prohibiting torture, inhumane and degrading treatment, the government ought to treat everyone equally and should not take the pretext of maintaining security in order to violate this sacred right of people. They have to establish their national laws and legislation in this domain in conformity with those postulated by international law.

At the level of fighting discrimination, especially racial [9], the Cameroon government has collaborated with the international community in its own way to stop or fight against racial discrimination. To this, the state makes sure men and women of whatever status should be treated in the same manner and equally [10] in all domains of applicability. This aspect of non-discrimination has been practiced in several disciplines such as education, health, employment, property, business, among others.

Regional and Sub-Regional Commitments of Cameroon

Tremendous efforts have been made by Cameroon in the regional and sub-regional levels in effectively protecting the rights and status of foreigners and migrants. This is portrayed through relevant instruments like the African level where a mention is made of the African Charter on Human and Peoples' Rights [11] – a charter promoting and protecting human rights within the continent. Cameroon as a signatory and member of this charter has ensured that its national dispositions on human rights protection and implementation should be in conformity with those provided in the charter. The human rights protected and guaranteed by the charter are the same as postulated in the country's relevant legal texts of criminal matters [12], human rights guarantor [13], labor relations [14], and a compilation of others. These texts ensure that those vested with the competent authority to ensure implementation and

observance should do so without any trace of derogation, violation, and discrimination.

This procedure and model for human implementation is in reality; but the reality here is that we are not satisfied with the rate and rampant increases in human rights violation in the country. We do understand that there is some form of discrimination in the application and implementation of human rights in the country among nationals or citizens and the position of foreigners is even worse. Women in the country continue to face violation of their fundamental rights in the country, even expatriates, and migrant workers in the country have reported cases of human rights abuses meted out to them by the public officers and authorities [15]. We receive complains of public officers receiving bribes from foreigners, some even threatened them on deportation if they did not collaborate with them [16] and some others refused access to court on the basis of nationality and discrimination.

The situation is not different with children. Cameroon has also signed and ratified the lone African document to protect children living in its territory [17]. This document of legal standing is out to promote and protect the right and welfare of the child in the continent. Rights such as those of education, parental guard, and health, and nutrition, conducive environment of living, among others, are enumerated in this prestigious document. Cameroon on its part to see that the instrument is implemented has enacted a series of laws and legal texts. Texts such as the country's Constitution, Penal Code, Civil Code, Nationality Code, Refugee Law and others promote and encourage the rights and welfare of the child. To show its seriousness on children rights, institutions such as the Ministries of Social Affairs and that of the Family have been created to monitor the activities of these children.

Our main concerns here are those pertaining to migrants or refugees. What has the country done so far in ensuring that children of these categories are offered the same protection and facilities as any other children? Are we saying that when it comes to implementation phase, home children are treated the same as those of

foreigners or refugees, even with the available legal dispositions provided to protect children's rights? We can bear in mind that no matter the seriousness and extent of application of the law, there will continue to be the concept of discrimination and abuse when it comes between home children and foreign. There is continued discrimination and violation of laws in various levels of protection of children's rights, especially in the domain of education, health, nutrition and other spheres of intervention.

At the sub-regional level, Cameroon signed on 19 July 2006 the Convention of 16th March 2006 on Cooperation and Mutual Legal Assistance between the Member States of the Economic Community of Central African States being cooperation to combat crimes and other illicit practices. This unit sees the need of states of Central Africa to cooperate and unite to combat crime waves in the sub-region. It brings to light the birth of the INTERPOL a unit to investigate and combat crimes such as those trafficking, be it human, child, or drug in the sub-region. This is a good initiative put in place by member states of the sub-region, because the proportions of crime waves in the sub-region have reduced drastically since the creation of this unit among member states. We have been seeing the success made so far by INTERPOL as far as crimes are concerned in the sub-region. There is a problem that exists with the unit, and such problem has affected the effectiveness and extent of application of the text creating the unit. Problem such as state sovereignty and superiority among states has affected the extent of the application of this convention. Most of the states in the sub-region protect their sovereignty to the detriment of the unit and this has affected the functioning of the unit. The problem is not just for states to come together and accept to form laws or conventions; the problem is at the level of implementing these laws in their respective territories. The state finds it difficult to provide information that will facilitate or aid in the advancement and functioning of the unit; this aspect has frustrated the mission and objective of the cooperation. Nevertheless, tremendous efforts have been made by member states of this unit to see that it moves from height to height like the provision of

financial and human assistance for the advancement of the Institution.

Also, Cameroon has ratified the Central African Economic and Monetary Community (CEMAC) agreement on judicial cooperation, adopted in Brazzaville on 28th January 2004 [18]. The primary objective of this agreement was the cooperation of judicial authorities of the sub-region in partaking of the realization of certain activities such as the security of the sub-region, emergency cases, financial regulations, and even crime combating. Further, we also have the CEMAC extradition agreement, adopted in Brazzaville on 28th January 2004 [19] and the CEMAC Accord on Non-aggression and Mutual Assistance in Defense, adopted in Brazzaville on 28th January 2004 [20].

DOMESTIC NORMATIVE FRAMEWORK

The status and rights of foreigners residing in Cameroon are broadly recognized within the framework of Cameroon's domestic legal system. They are explicitly provided in the country's Constitution, as in many other member states of the United Nations and their elements are incorporated into numerous Acts.

The preamble [21] to the Constitution actually proclaims the Cameroonian people's commitment to the following of universal values and principles such as those of life, movement, prohibition of arbitrary commands or orders, healthy environment, fair hearing before the courts, freedom of opinion, religious beliefs, conscience and worship, the retrospective nature of the law, among other rights.

The preamble to the Constitution guarantees to everyone including foreigners the right to move freely in the country. This provision specifically allows foreigners the right to elect residence or to leave one's country and to be granted asylum in another [22]. Furthermore, several national instruments enacted in recent years have progressively strengthened and enhanced the rights and freedoms enjoyed by foreigners to elect residence in Cameroon [23].

The foreigner reality nature of Cameroonian law is demonstrated by Law No. 68/LF/3 of

11th June 1968 [24], which allows any child found in Cameroon, without a nationality, be granted Cameroonian nationality. Section 12 of this code grants Cameroonian nationality as of right to any child born in the country to any person who has no other nationality of origin. Besides, the law on refugees provides for the right to naturalization, for refugees under conditions determined under its dispensation.

Law No. 97/09 of 10th January 1997 lays down the conditions for entry, stay and exit of aliens and its enabling instrument, Law No. 2000/286 of 12th October, subjects the stay of foreigners in the country to the acquisition of a residence permit. This law contains liberal guarantees as well. It interestingly considers border drive, escorting back border and expulsion of illegal immigrants as administrative measures rather than criminal actions with accompanying repressive consequences.

Yet, in spite of the above, where there is conviction for infringement of immigration laws, the court may order the above measures without prejudice to other penalties [25]. It is observed that Law No. 90/54 of 19th December 1990 relating to the maintenance of law and order that empowers administrative authorities to arrest and detain persons for 15 days could be applied to non-nationals too.

In view of the increasing numbers of refugees, the Cameroonian government promulgated Law No. 2005/006 of 27th July 2005 relating to the status of refugees. Section 2 of the law adopts the definition of refugees contained in the Geneva Convention of 28th July 1951 on the status of refugees and the problems of refugees in Africa, which was signed in Addis-Ababa on 10th September 1969. This broad-based definition has in theory shown the country's foreign-friendly disposition.

By virtue of Sections 7(1) and 15 of the law, it is forbidden to extradite, turn back, or to take any measures whatsoever which force anyone, who is properly defined as a refugee, to return or remain in a country where his life, physical integrity, or freedom could be threatened. If such a person is an illegal immigrant, no criminal sanction may be taken against him, but he shall present himself immediately to

competent national authorities for regularization of his situation [26]. It should be noted however that a refugee on legal stay in Cameroon might be expelled for reasons of national security and public order. A refugee shall enjoy economic and social rights especially the right to naturalization.

INSTITUTIONAL PROTECTION

The protection of foreigners who are residents and doing business in Cameroon is part of the objectives of some institutions and ministers. It is as well a product of partnership agreement of the implementation of the policies aimed at ameliorating the hardship of foreigners in Cameroon.

Institutionally, the framework comprises political, institution, an independent judiciary, a national commission on human rights, a Ministry of External Relations, Ministries of Social Affairs, Labor, Tourism, Basic education, The Secretary of State for Defense, the General Delegates of National Security, the Ministry of Women and Empowerment and the Family and the Cameroon Penitentiary Administration. It should be noted that the list provided above is not exhaustive and that other partnership agreements for the implementation of policies aimed at guaranteeing such protection exist.

THE NATIONAL COMMISSION ON HUMAN RIGHTS AND FREEDOM

To enhance the work of the National Commission on Human Rights and Freedoms in Cameroon and to align its activities with the provisions of the Paris Principle, the National Human Rights Commission was set up by Decree No. 90/1459 of 8th November 1990. This commission was transformed to the National Commission on Human Rights and Freedom by Law No. 2004/16 of 22nd July 2004. This commission has done a lot in implementing the economic, social, and cultural rights of citizens and even that of foreigners.

In its general comment No. 10 on the role of national human rights institutions in the protection of economic, social, and cultural rights, the Committee noted that such institutions have a potentially crucial role to play in promoting and ensuring the

indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or been neglected or given a low priority by it. It is therefore essential that full attention be paid to economic, social, and cultural rights in all of the relevant activities of these institutions.

Moreover, according to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, promotional and monitoring bodies, such as national ombudsman institutions and human rights commissions, should address violations of economic, social, and cultural rights as vigorously as they address violations of civil and political rights. In that context, the Paris Principles emphasize that the functions of a human rights institution include investigating alleged violations of human rights and advising the government on activities relating to human rights issues.

In line with such international standards, the National Committee on Human Rights and Freedoms, set up by Decree No. 90/1459 of 8th November 1990, has been converted into the National Commission on Human Rights and Freedoms (NCHRF), established by Act No. 2004/016 of 22 July 2004. This conversion aims at enhancing the capacities of the national body responsible for the promotion and protection of human rights. Accordingly, the Commission is an independent body for consultation, monitoring, evaluation, dialogue, cooperation, promotion, and protection with regard to human rights and freedoms.

This commission in the need to meet foreigners' rights in Cameroon has contributed tremendously to see that foreigners living and staying in the country are accorded protection through the respect of their fundamental human rights. They have to work in collaboration with the United Nations Refugee Agency based in Yaoundé and other parts of the country in seeing that the rights of the refugees are being guaranteed. They see to it that those who violate refugee rights are punished accordingly. Apart from the Refugee Agency, they also work in collaboration with the International Labor Organization in

protecting the rights of migrant workers in the country. They see to it that employers do not violate foreigners' rights during the formation, execution, and termination of the employment contracts. As if that is not enough, they work with the government in transverse its various agencies to make sure that fundamental human rights are respected during enforcement.

The mission of the Commission is very interesting in the promotion and protection of human rights cases in the country. This commission has its own lapses that have in one or the other affected the extent of human rights application in the country. The fact that it does not have an executory force makes it more of window dressing. The essence in human rights is not the monitoring or promotion, but rather that of implementation. This Commission cannot effectively handle cases of human rights when operating within the confines of the state. It lacks the required financial and human resources, which will frustrate the mission of the Commission. We continue to experience cases of human rights violations everyday even among foreigners whereas the country has a Commission supervising and observing the human rights situation of the country. Due to the increase and the rampant existence of human rights abuse in the country, there is a need for some other institutions to see that human rights protection becomes a reality.

Human Rights and International Cooperation Directorate within the Ministry of Justice

The Human Rights and International Cooperation Directorate was created by Decree No. 2005/122 of 15th April 2005 on the organization of the Ministry of Justice. The Directorate has the following responsibilities, inter alia:

- Monitoring human rights issues generally.
- Monitoring the implementation of international treaties related to human rights.
- Informing judicial and penitentiary system staff about human rights protection rules and raising their awareness of such standards.

Among other activities undertaken since its creation, the Directorate has prepared three reports on human rights in Cameroon in 2010, 2011 and 2012, respectively. Through the Directorate, Cameroon specifically cooperates with Human Rights Council special *rapporteurs* on torture in order to strengthen international cooperation.

Yearly, the Ministry of Justice seeks to present a balance sheet of the government's measures, court decisions, and actions by national associations for the defense of human rights through annual reports drawn up with contributions from ministries and some actors of the civil society directly concerned with human rights issues, and helps greatly in promoting and providing information on the covenants and other conventions aimed at promoting and protecting the rights of foreigners among others. This institution within the Ministry of Justice has contributed tremendously in portraying the situation of human rights practices in the country every year through its yearly reports on the human practices in the country [27]. According to this report, the human rights situation, especially that of foreigners, is not good. The law makes provision for something, but something else is being practiced. There are continuous violations and abuses of human rights cases reported daily in respect to foreigners coming, staying, and even leaving the country. Most of these foreigners are ill-treated, tortured, harassed, and even discriminated upon by the law enforcement officers of the country [28].

The Attachment of Penitentiary Administration to the Minister of Justice

By Decree No. 2004/320 of 8th December 2004 organizing the government of Cameroon, Penitentiary Administration was transferred from the Ministry of Territorial Administration to the Ministry of Justice. The reform resulted from the recommendation of the committee against torture approved by the head of state. It is salutary as it enhances the smooth follow up of the criminal process. A secretary of state assists the minister in charge of justice in managing the administration of justice [29]. Any penitentiary staff found guilty of torturing or maltreating detainees is punished in accordance with the provisions of Order No. 080 of 16th May 1983 to lay down the

disciplinary system in force. Sanctions range from detention to delay in promotion, without prejudice to criminal proceedings. All this information is existing, but what we are interested in is at the level of practice. What has the sector done so far in ensuring that foreign detainees in Cameroonian prisons are treated with absolute protection and the respect of their rights? The same human report provided for by the Ministry of Justice spelled out the living conditions of prisoners in the Cameroon prisons. The congested nature of the prisons, unhygienic conditions, nutrition, and even health are horrible. Most of the foreign detainees are being tortured and others are staying under unbearable living conditions in these prisons. The law has made provision for sanction meted out to those who violate foreign prisoners' rights, but the situation here is the contrary. There is a great difference between theory and practice or deductive and inductive in the enforcement of human rights laws.

SPECIAL DIVISION FOR THE CONTROL OF SERVICES OF THE POLICE

A special division for the control of services of the police was set up by Decree No. 2005/065 of 23rd February 2005. It ensures the policing of the police. This unit is in charge of:

1. Protecting security, state of mind, morale, loyalty of nationals' security personnel, employees and civil servants of the state or public authorities.
2. Active participation in combating corruption.
3. Contributing to the enhancement of discipline and respect for professional ethics in the national security.
4. Carrying out administrative and judicial investigations concerning national security personnel.

The special division of the police adopts measures aimed at limiting the use of force by the police while performing their duties. For example, circular No.007808 SES 1-9 of 21st June 1993 on remand of detainees, and judicial sanction sensitizes the police corps on the issue related to torture.

Furthermore, the Delegate General of National Security has entered into agreements with

international and regional partners aimed at building the capacity of police instructors. Apart from this new structure, there exist other officials specifically in charge of discipline within the police corps. They are responsible for preventing and curbing excesses committed by the police during or out of service. To guarantee the rights of foreigners and nationals alike, measures such as the daily checks by officials in charge of detainees to early identify the sick, prohibit all inhumane and degrading treatment on detainees and avoid the illegal whipping of detainees for the purpose of obtaining confession. This special control unit of the police is to see that foreign detainees are treated with some sort of protection especially as their human rights are concerned. The situation keeps on complicating in dealing with foreign detainees who are being tortured, harassed and even abused upon to obtain information regarding the nature of offences committed. All these shortcomings really affect the efficiency and level of application of the human right system.

CONCLUSION

The mentioning of the above legal and institutional frameworks of the protection of foreigners in Cameroon is to see how the respective country has implemented the international standards put in place to manage migration. The question that crops up is whether this state has effectively handled foreigners' issues through its legal and institutional provisions. We have to bear in mind that passing laws and putting in place institutions to manage immigration activities is not enough but accompanied by effective implementation of these laws and institution. So therefore, it is operative to understand that, though the country has created and enacted series of proliferated laws and legal dispositions in seeing that foreigners taking up residence in their territory should be given absolute protection and safeguards in traverse international, regional and national platforms, the foreigners continue to experience high degree of violation of their fundamental rights. This violation of foreigners' rights has really affected the country's human rights protection of foreign complexities. The government of Cameroon has made tremendous efforts at all levels in providing special protection to

foreigners through the provisions of some basic facilities in order to make their stay a favorable one in the territory, even though such protection is marred by certain infelicities affecting proper implementation. It is in this regard that there has been some degree of questioning as to whether the country's legal system can be considered favorable in matters relating to foreigners' protection and safety.

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6. ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930;
7. Convention of 28th July 1951 relating to the Status of Refugees ratification by succession of State on 23rd June 1961
8. Section 31 of the 1951 Refugee Convention.
9. Ibid, section 33(1).
10. Convention of 10th December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment accession on 19th December 1986;
11. Convention of 18th December 1979 on the Elimination of All Forms of Discrimination against Women ratification on 23rd August 1994.
12. Texts such as the Constitution of 1996 in its preamble, the Penal Code of 1967 in its Section 1 and other relevant texts have provided for equality of all.
13. African Charter on Human and Peoples' Rights, adopted on 27th June 1981 ratified on 2^{1st} October 1986.
14. The 1967 and 69 Cameroon Penal Code.
15. The preamble of the 1996 Constitution.
16. The 1992 Cameroon Labour Code.

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18. Ibid, Country Human Right Report on arbitrariness and torture, 2012.
19. African Charter on the Rights and Welfare of the Child adopted on 21st November 1989 ratified on 5th September 1997.
20. Decree No. 2006/050 of 30th January 2006.
21. Decree No. 2006/048 of 30th January 2006.
22. Decree No. 2006/049 of 30th January 2006.
23. Under article 65 of the Constitution, the preamble is an integral part of the Constitution.
24. Article 15 of the Universal Declaration on Human Right (UDHR) 1948.
25. These laws include; Law No. 97/012 of 10th January 1997 to lay down the condition for foreigners to enter, stay and exit in Cameroon, Law No. 2005/006 of 27th July 2005 relating to the status of Refugees in Cameroon, Law No. 2005/015 of 29th December 2005 relating to the fight against child trafficking and Law No.97/010 of 10th January 1997 to amend and supplement certain provisions on the law of extradition.
26. Law No. 68/LF/3 of 11th June 1968 to organize the system of requisitioning. It provides under section 13 for the possibility of requisitioning persons and properties. Decree No.68-DF-417 of 15th October 1968 fixes modalities for its application. In this regard, persons and properties can be taken and the possibility of obtaining compensations.
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